

## CCRB INVESTIGATIVE RECOMMENDATION

|   |                                     |                           |   |   |                                 |
|---|-------------------------------------|---------------------------|---|---|---------------------------------|
| Investigator:<br>Joshua Richardson                | Team:<br>Squad #7                   | CCRB Case #:<br>201807156 | <input type="checkbox"/> Force                        | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|   |                                     |                           | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.                 | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Wednesday, 08/29/2018 8:00 AM | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>20           | 18 Mo. SOL<br>2/29/2020                               | EO SOL<br>2/29/2020                           |                                 |
| Date/Time CV Reported<br>Wed, 08/29/2018 4:12 PM  | CV Reported At:<br>CCRB             | How CV Reported:<br>Phone | Date/Time Received at CCRB<br>Wed, 08/29/2018 4:12 PM |   |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Subject Officer(s)    | Shield | TaxID  | Command |
|-----------------------|--------|--------|---------|
| 1. An officer         |        |        |         |
| 2. DT3 Daniel Howell  | 07279  | 922521 | DBMN OP |
| 3. DT3 Brian Greco    | 1961   | 944072 | DBMN OP |
| 4. DT3 Richard Pengel | 04240  | 933161 | DBMN OP |
| 5. SDS Frank Burns    | 02906  | 923596 | DBMN OP |

| Officer(s)           | Allegation  | Investigator Recommendation |
|----------------------|---|-----------------------------|
| A.SDS Frank Burns    | Abuse: Sergeant Frank Burns entered § 87(2)(b) in Manhattan.                        |                             |
| B.DT3 Richard Pengel | Abuse: Detective Richard Pengel entered § 87(2)(b) in Manhattan.                    |                             |
| C.DT3 Daniel Howell  | Abuse: Detective Daniel Howell entered § 87(2)(b) in Manhattan.                     |                             |
| D.DT3 Brian Greco    | Abuse: Detective Brian Greco entered § 87(2)(b) in Manhattan.                       |                             |
| E.SDS Frank Burns    | Abuse: Sergeant Frank Burns searched § 87(2)(b) in Manhattan.                       |                             |
| F.DT3 Richard Pengel | Abuse: Detective Richard Pengel searched § 87(2)(b) in Manhattan.                   |                             |
| G.SDS Frank Burns    | Abuse: Sergeant Frank Burns threatened to arrest § 87(2)(b)                         |                             |
| H.SDS Frank Burns    | Abuse: Sergeant Frank Burns threatened to arrest § 87(2)(b)                         |                             |
| I.SDS Frank Burns    | Abuse: Sergeant Frank Burns threatened to arrest § 87(2)(b)                         |                             |
| J.DT3 Richard Pengel | Discourtesy: Detective Richard Pengel spoke discourteously to § 87(2)(b)            |                             |
| K. An officer        | Discourtesy: An officer spoke discourteously to § 87(2)(b)                          |                             |
| L.SDS Frank Burns    | Abuse: Sergeant Frank Burns interfered with § 87(2)(b)'s use of a recording device. |                             |

### Case Summary

On August 29, 2018, § 87(2)(b) filed this complaint, on behalf of herself and her sons, § 87(2)(b) and § 87(2)(b) with the CCRB via phone.

On August 29, 2018, at approximately 8:00am, Sgt. Frank Burns, Det. Richard Pengel, Det. Daniel Howell, and Det. Brian Greco, all of the Detective Bureau of Manhattan North, entered § 87(2)(b) § 87(2)(b) in Manhattan, which is § 87(2)(b)'s residence (**Allegations A, B, C, and D; Abuse of Authority, § 87(2)(g)**). While inside the apartment, Sgt. Burns and Det. Pengel searched § 87(2)(b)'s bedroom (**Allegations E and F; Abuse of Authority, § 87(2)(g)**). During and after the search of the apartment, Sgt. Burns allegedly threatened to arrest § 87(2)(b) and § 87(2)(b) by saying, “We know there’s a gun in the house. We’re going to keep searching. You might as well tell us or we’re going to arrest all of you”, “We found weed and we found the bullets. If we find anything else, everybody’s going to jail”, and “Everyone in this house will go to jail if I find anything in this apartment” (**Allegations G, H, and I; Abuse of Authority, § 87(2)(g)**). After finding marijuana in the apartment, Det. Pengel allegedly told § 87(2)(b) that he had ‘bullshit weed because he didn’t smell it when they entered the apartment (**Allegation J; Discourtesy, § 87(2)(g)**). At some point, § 87(2)(b) heard an officer tell § 87(2)(b) to ‘back the fuck off’ (**Allegation K; Discourtesy, § 87(2)(g)**). Sgt. Franks then approached § 87(2)(b) who was recording on his cell phone and stated, “Talk to your mom about what I talked to you. Tell her to pause that, and she can keep filming in a second. Is it off? Let me see,” and then allegedly grabbed the cell phone and turned the recording off (**Allegation L; Abuse of Authority, § 87(2)(g)**).

There was video footage obtained in regards to this incident. Cell phone camera footage recorded by § 87(2)(b) was provided to the investigation by § 87(2)(b).

### Findings and Recommendations

**Allegation A: Abuse of Authority: Sergeant Frank Burns entered § 87(2)(b) in Manhattan.**

**Allegation B: Abuse of Authority: Detective Richard Pengel entered § 87(2)(b) in Manhattan.**

**Allegation C: Abuse of Authority: Detective Daniel Howell entered § 87(2)(b) in Manhattan.**

**Allegation D: Abuse of Authority: Detective Brian Greco entered § 87(2)(b) in Manhattan.**

**Allegation E: Abuse of Authority: Sergeant Frank Burns searched § 87(2)(b) in Manhattan.**

**Allegation F: Abuse of Authority: Detective Richard Pengel searched § 87(2)(b) in Manhattan.**

**Allegation G: Abuse of Authority: Sergeant Frank Burns threatened to arrest § 87(2)(b)**

**Allegation H: Abuse of Authority: Sergeant Frank Burns threatened to arrest § 87(2)(b)**

**Allegation I: Abuse of Authority: Sergeant Frank Burns threatened to arrest § 87(2)(b)**

**Allegation J: Discourtesy: Detective Pengel spoke discourteously to § 87(2)(b)**

**Allegation K: Discourtesy: An officer spoke discourteously to § 87(2)(b)**

**Allegation L: Abuse of Authority: Sergeant Frank Burns interfered with § 87(2)(b)'s use of a recording device.**

The investigation was unable to obtain a sworn statement from § 87(2)(b). He was scheduled for an appointment at the CCRB for September 5, 2018, but failed to appear and did not call ahead to cancel or reschedule. Contact attempts, including phone calls and mailed letters, were exhausted, but the investigation received no further response from him.



snagit.mp4 (Board Review 01)

Cell phone footage recorded on § 87(2)(b)'s phone captured a portion of the incident in which Sgt. Burns speaks to § 87(2)(b) and § 87(2)(b) in the kitchen. The footage begins with the family in the kitchen and the recording facing the closed door of § 87(2)(b)'s bedroom. At the 00:06 second mark, the bedroom door opens, with Det. Pengel walking out first, and Sgt. Burns walking out second. At the 00:15 mark, Sgt. Burns shines his flashlight towards the kitchen area and § 87(2)(b) blocking his face from being visible in the recording, and § 87(2)(b) states, "Cover." At the 00:23 mark, Sgt. Burns says, "Hey, talk to your mom about what I talked to you. Tell her to pause that, and she can keep filming in a second." § 87(2)(b) is heard saying, "Okay", while the recording goes from showing Sgt. Burns face, to showing the floor, as if § 87(2)(b) put the phone down. Sgt. Burns then states, "Let me see it. Is it off? Let me see. Turn it off" before the video abruptly stops.

§ 87(2)(b) testified that at approximately 7:41am on August 29, 2018, she was inside her apartment with her sons, § 87(2)(b) and § 87(2)(b). § 87(2)(b) explained the layout of her apartment: the front door of her three-bedroom apartment opened into the living room, with the kitchen to the right of the living room, her bedroom was the first bedroom beyond the kitchen, followed by § 87(2)(b)'s bedroom and then § 87(2)(b)'s bedroom. § 87(2)(b) heard knocking at the front door and when she went to look, she observed three plain clothes officers, identified via the investigation as Sgt. Burns, Det. Pengel, and Det. Howell. § 87(2)(b) advised § 87(2)(b) that it was the police and that he should get ready to go with them, but he went to hide in her bedroom instead. § 87(2)(b) and § 87(2)(b) opened the door. Sgt. Burns explained that they were looking for § 87(2)(b) and presented § 87(2)(b) with a document featuring a photo of him- which she believed to be his arrest warrant. § 87(2)(b) informed them that he was not there, but Sgt. Burns asked where he was and then walked into the apartment without permission. § 87(2)(b) and § 87(2)(b) stepped aside, and § 87(2)(b) walked away from the front door and toward her bedroom with Sgt. Burns and Det. Pengel following. Her bedroom door was open and the officers observed § 87(2)(b) sitting on the bed. Sgt. Burns and Det. Pengel ordered him to stand up, which he did, and then they entered the bedroom and closed the door behind them. They remained there for approximately one hour. § 87(2)(b) and § 87(2)(b) who had come out of his bedroom, stood in the kitchen. § 87(2)(b) asked

the officers to open the door but they didn't and she informed them that they had a warrant to arrest § 87(2)(b) but not to search her home. However, after this incident, § 87(2)(b) noticed that all the drawers from her dresser were opened, and it appeared that the officers had searched it. At some point, a fourth officer, identified via the investigation as Det. Greco entered the apartment, and entered her bedroom as well while Det. Howell guarded the front door. While § 87(2)(b) was still being guarded by the officers, Sgt. Burns exited § 87(2)(b)'s bedroom and searched § 87(2)(b)'s and § 87(2)(b)'s bedrooms, and the bathroom. § 87(2)(b) stated no officer, including Sgt. Burns asked permission to search her home. Sgt. Burns recovered four bullets from a dresser in § 87(2)(b)'s bedroom and then came out to the kitchen area informed them that they would all be arrested if they did not reveal the location of the firearm associated with the bullets they found. However, § 87(2)(b) informed the officers that there were no firearms in the apartment. § 87(2)(b) asked § 87(2)(b) for his phone and when he passed it to her, she began recording. While she was recording, Sgt. Burns shined his flashlight toward the camera, and blocked his face in the recording. § 87(2)(b) told Sgt. Burns that he was ruining the video and passed the phone back to § 87(2)(b). Sgt. Burns told him to shut the phone off. § 87(2)(b) lowered his phone and told Sgt. Burns that he had turned it off. However, Sgt. Burns noticed that the phone was still on, and then took the phone from his hand, turned it off, and placed it on the kitchen table. Sgt. Burns then went back into § 87(2)(b)'s bedroom and a short time later, the officers walked him out of the apartment. § 87(2)(b) did not testify to any officer cursing at her or anyone in the apartment. (Board Review 02)

§ 87(2)(b) testified that on August 29, 2018, between 7:20am and 7:40am, he was sleeping with § 87(2)(b) in their bedroom, while § 87(2)(b) was asleep in his own bedroom at the end of the hall. § 87(2)(b) came into their bedroom. She appeared nervous, and said there were officers knocking on the front door. § 87(2)(b) went to the front door and observed Sgt. Burns, Det. Pengel, and Det. Howell. § 87(2)(b) opened the door and stood to the side with § 87(2)(b) in such a way that they were not blocking a pathway into the apartment. Sgt. Burns stated that they had an arrest warrant for § 87(2)(b) and asked if he was home, but they told him that he wasn't. § 87(2)(b) then took a step back from the door and Sgt. Burns walked into the apartment first followed by the other two officers. No one gave the officers permission to enter the house and they never asked to enter. Sgt. Burns observed § 87(2)(b) walking from his own bedroom to § 87(2)(b)'s bedroom. The officers told him to put his hands up and that he was under arrest pursuant to an arrest warrant. He complied and Sgt. Burns brought him into § 87(2)(b)'s bedroom. Det. Pengel accompanied them and closed the door while Det. Howell remained at the entrance door and informed § 87(2)(b) and § 87(2)(b) that they had to stay in the kitchen. Unbeknownst to the officers, § 87(2)(b) was also home and asleep in his own bedroom at the end of the hall. At some point, Det. Howell left the apartment quickly to get Det. Greco who could not gain access to the building. When they returned, Det. Howell stayed by the front door, while Det. Greco went to § 87(2)(b)'s bedroom. § 87(2)(b) could not hear what was happening inside the bedroom. Sgt. Burns exited § 87(2)(b)'s bedroom and asked if anyone else was home. § 87(2)(b) informed him that § 87(2)(b) was asleep in his bedroom and did not know what was going on. Sgt. Burns knocked on § 87(2)(b)'s door, which was locked, and informed him that he had to vacate his room. § 87(2)(b) grabbed his phone from his room, and entered the kitchen. § 87(2)(b) didn't know if any

officer entered § 87(2)(b)'s bedroom and searched it but stated that nothing that he observed after the incident suggested that the bedroom had been searched. Sgt. Burns informed § 87(2)(b) that the officers knew that a gun was in the house, and acknowledged that he knew it belonged to § 87(2)(b) and not to him, § 87(2)(b) or § 87(2)(b) and his family denied knowing anything about a gun. Sgt. Burns then said that he was going to have to check § 87(2)(b)'s bedroom, and then took Det. Pengel into that bedroom and closed the door behind them. No one granted verbal or nonverbal consent for them to search the apartment. § 87(2)(b) heard drawers opening and closing and items being tossed around. Sgt. Burns found a small bag containing three to four bullets, and showed this to everyone. § 87(2)(b) was previously aware of these items and informed the investigation that they were buried in a dresser drawer after one of his brothers found them outside years ago, and that they were live rounds. Sgt. Burns stated, "We know there's a gun in the house. We're going to keep searching. You might as well tell us or we're going to arrest all of you." However, they all maintained that they did not know anything about a firearm. § 87(2)(b) began recording on her cell phone, with the flash being on since the apartment was dark. Sgt. Burns continued to search the room and then discovered a small bag containing approximately half an ounce of marijuana. Sgt. Burns stated, "We found weed and we found the bullets. If we find anything else, everybody's going to jail." § 87(2)(b) objected indicating that he knew the law and that he could not go to jail for less than one ounce. Sgt. Burns didn't respond and kept searching the same bedroom. After a few minutes, Sgt. Burns and Det. Pengel exited the bedroom, and § 87(2)(b) observed that there were items thrown around in the room. Sgt. Burns entered the kitchen, with his flashlight pointed towards the civilians, thereby blocking his face in the recording. § 87(2)(b) stated, "Block your face, we see you," as he entered the kitchen. Sgt. Burns walked to them and stated, "Remember what I told you. Stop recording for a second. Give me your phone." They initially agreed to stop recording, and § 87(2)(b) passed the phone to § 87(2)(b). He locked the screen and intended to keep recording, but told Sgt. Burns that he stopped recording. Sgt. Burns grabbed § 87(2)(b)'s phone from his hands and turned off the recording himself by pressing the power button and swiping the screen to power down the phone. Sgt. Burns did not access the phone otherwise because it is passcode protected. Sgt. Burns asked about the gun again and stated, "Everyone in this house will go to jail if I find anything in this apartment." The family again stated they don't about any gun, and a few minutes later, § 87(2)(b) was escorted out of the apartment by the officers. § 87(2)(b) did not mention that any officer cursed at anyone in the apartment.

§ 87(2)(b) was shown the above documented video during his testimony and he identified Sgt. Burns as the officer who threatened to arrest them, who kept asking about the firearm, and also added that the video ended abruptly because Sgt. Burns took the phone from § 87(2)(b)'s hands and turned it off. (Board Review 03)

§ 87(2)(b) testified that on the morning of August 29, 2018, he was asleep in his bedroom with § 87(2)(b) when he heard loud knocking at the front door. § 87(2)(b) was aware that there was an Investigation Card (I-Card) in his name related to a domestic violence dispute, but it did not involve a firearm. § 87(2)(b) did not hear the exchange between the officers and his family members at the door because he walked from his bedroom to his mother's to hide because he was nervous due to prior negative interactions with the police. He hid

behind a dresser inside § 87(2)(b)'s room, which was near the bedroom door. Within a few minutes, § 87(2)(b) heard officers walking into the same room, and then heard Sgt. Burns asking him to identify himself and to step out, which he did. While he was being handcuffed, he heard an officer that he could not see, tell § 87(2)(b) to “back the fuck off” and to sit in the living room. At some point during this incident, he heard an officer say that he could arrest everyone in the house, but did not provide any reason. Sgt. Burns explained that he had an arrest warrant for him and mentioned that they were also looking for a .357 handgun that they knew was in the apartment. § 87(2)(b) informed the officers that there were no guns in the apartment. Sgt. Burns asked § 87(2)(b) if he minded if he searched the apartment and he asked if they had a search warrant, but Sgt. Burns did not respond and walked away to another room without saying anything. § 87(2)(b) did not provide verbal or nonverbal consent for the any officer to search the apartment. § 87(2)(b) did not know of any family member providing consent for such a search. Det. Pengel left § 87(2)(b)'s bedroom shortly thereafter leaving him alone with Det. Greco. § 87(2)(b) knew Sgt. Burns and Det. Pengel entered his bedroom because he heard the door squeak open and then shut. A few minutes later, Sgt. Burns returned to § 87(2)(b)'s bedroom and informed § 87(2)(b) that he discovered two to three bullets in a dresser drawer. He received the bullets from a friend a couple of months to a year ago. He did not know what type of gun they were associated with, but that he wanted to keep them because he thought they were cool. Sgt. Burns also found a large Ziploc bag containing four to five ounces of marijuana. Det. Pengel referred to marijuana as “bullshit weed” because he did not smell it when he walked into the apartment. Sgt. Burns and Det. Pengel then searched § 87(2)(b)'s bedroom by opening drawers and moving clothing inside of the dressers. The officers also lifted the mattress, and opened her closet. After approximately 30-45 minutes, the officers helped § 87(2)(b) get dressed and then escorted him out of the apartment. (Board Review 04)

Sgt. Burns stated that on August 29, 2018, at approximately 8:00am, he and his partners, Det. Howell, Det. Pengel, and Det. Greco went to § 87(2)(b) § 87(2)(b) in Manhattan to pick up § 87(2)(b) and bring him back to the 18<sup>th</sup> Precinct stationhouse due to him being wanted on two probable cause to arrest I-cards for domestic violence. They were in possession of wanted flyer #§ 87(2)(b) regarding § 87(2)(b) that gave them knowledge that § 87(2)(b) was known to be in possession of a .357 handgun and was known to sell marijuana in the neighborhood. When they arrived at the location, Sgt. Burns knocked on the door, and § 87(2)(b) § 87(2)(b) answered it. He explained that they were looking for § 87(2)(b) and she stated that he was not home. § 87(2)(b) then without being prompted, voluntarily stated the officers can come in and look for him if they wanted. Sgt. Burns never asked to come in or otherwise mentioned having to come in to search for § 87(2)(b). Sgt. Burns took § 87(2)(b)'s statement as permission to enter the house and look for him. When they entered the apartment, § 87(2)(b)'s demeanor was calm and she never expressed that she didn't want them to be inside her apartment. Sgt. Burns never told § 87(2)(b) to “back the fuck off” and never heard any officer do so. Sgt. Burns walked towards § 87(2)(b)'s § 87(2)(b)'s bedroom and observed § 87(2)(b) § 87(2)(b) inside of it. Sgt. Burns didn't recall if they had a verbal exchange at this time. Sgt. Burns then looked inside of § 87(2)(b)'s bedroom and observed § 87(2)(b) § 87(2)(b) inside of it hiding behind a dresser that was pushed against a bed. Sgt. Burns requested that § 87(2)(b) step out and he complied. He was placed in handcuffs and was explained that they were there due to him having two I-Cards for domestic assault. He didn't recall if § 87(2)(b) responded but his

demeanor was calm and compliant. Sgt. Burns also informed him that they had knowledge that he was in a possession of a .357 handgun. § 87(2)(b) stated he has no firearm and voluntarily told them to feel free to ‘tear the house apart’ to look for it. Sgt. Burns never asked to search or mentioned searching for the firearm. Sgt. Burns took § 87(2)(b) § 87(2)(b)s aforementioned comment to be permission to search the apartment to look for the firearm. Sgt. Burns went into § 87(2)(b)s bedroom and began to search for the firearm. At some point Det. Pengel came in to assist him, while Det. Greco stayed with § 87(2)(b). Sgt. Burns didn’t find a firearm but observed what appeared to be marijuana residue. However, Sgt. Burns wasn’t concerned with that and never stated “bullshit weed” or heard any officer state that. Sgt. Burns didn’t recall finding bullets in the apartment and didn’t recall any officer finding bullets. Sgt. Burns searched the room for approximately ten minutes before stopping. While, they searched the room, § 87(2)(b) was in the kitchen with § 87(2)(b). Sgt. Burns asked § 87(2)(b)s family members about the firearm they were looking for but stated he didn’t recall their responses. Sgt. Burns never uttered any of the following statements: “We know there’s a gun in the house. We’re going to keep searching. You might as well tell us or we’re going to arrest all of you”, “We found weed and we found the bullets. If we find anything else, everybody’s going to jail”, and “Everyone in this house will go to jail if I find anything in this apartment”. He never threatened to arrest § 87(2)(b) or § 87(2)(b) if they didn’t give him any information on a firearm in the house, nor did he hear any officer do so. Besides § 87(2)(b) the topic of arresting anyone else was never discussed. Sgt. Burns did not search § 87(2)(b)s bedroom or the third bedroom and only searched § 87(2)(b)s bedroom. When asked why he stated there was no particular reason just that he wasn’t going to tear the whole house apart. However, he was unaware if any of his partners searched any of the other bedrooms. Sgt. Burns spoke to both of § 87(2)(b)s brothers in the kitchen area because they were asking him what was going on. § 87(2)(b) was holding a phone in his hands during this conversation but Sgt. Burns was unaware that it was recording. However, at some point during the conversation it appeared as it was recording due to the way he was holding the phone- Sgt. Burns couldn’t describe the way he was holding it. Sgt. Burns asked him to stop recording because he felt that civilians are more likely to speak and inclined to give information when there is no recording of the conversation. Sgt. Burns felt that they would have been more likely to speak to him about § 87(2)(b) having a gun or be more honest if there was no recording of it. These were the only reason he asked him to stop recording. Sgt. Burns never grabbed the phone from anyone’s hands or did anything to cause the recording to stop besides asking that the recording be stopped. Sgt. Burns was unaware if § 87(2)(b) stopped recording. Sgt. Burns confirmed he did have a flashlight in his hands while inside the apartment but he never intentionally flashed the light towards the cell phone so the phone wouldn’t catch his face. The officers then removed § 87(2)(b) from the apartment and escorted him back to the 18<sup>th</sup> Precinct Stationhouse for arrest processing.

Sgt. Burns was presented with the above documented video footage and confirmed that he was the officer speaking to the family in regards to the recording. Sgt. Burns explained that the video takes place right after they searched § 87(2)(b)s bedroom. He also explained that when he shined his flashlight towards the kitchen where the family was his intention wasn’t to block his face because he didn’t realize he was being recorded at this point. Sgt. Burns reiterated that the reason he told them to pause the recording was because his feeling of civilians being more likely to speak honestly. Sgt. Burns’s attention was brought to where he can be heard

saying, “Let me see it, is it off”, and Sgt. Burns stated he didn’t recall if he ever saw the phone, and stated that he never took the phone or had the phone in his possession. (Board Review 05)

Det. Pengel’s testimony was consistent with that of Sgt. Burns with the following exceptions: upon arrival at the location, himself, Sgt. Burns and Det. Howell entered while Det. Greco went to the back of the apartment complex just in case anyone tried to flee or throw evidence out the window. When they entered the apartment, § 87(2)(b) pointed towards the back of the apartment toward a bedroom indicating that the room belonged to § 87(2)(b). Det. Howell stayed towards the front of the apartment with her for safety and security reasons. When they found § 87(2)(b) in § 87(2)(b)’s bedroom and after explaining that they had information about him having a firearm, § 87(2)(b) stated he had no firearm, that he was not that type of guy and voluntarily told them to feel free to check his bedroom and that all he had was marijuana in there. Det. Pengel went into § 87(2)(b)’s bedroom with the sole intention of getting § 87(2)(b) clothes to get him dressed- not to look for the firearm. However, before he went into § 87(2)(b)’s bedroom he observed that the third bedroom was opened. He went in just to make sure the area was secure and then described the room as very messy, with a mattress on the floor. No one was inside the bedroom. He didn’t search the room, but just stepped inside for a brief period of time. He then exited and headed into § 87(2)(b)’s bedroom, where Sgt. Burns was already. Det. Pengel observed marijuana but stated he didn’t pay it any mind because they weren’t there for that and it wasn’t a big amount. Det. Pengel looked for clothes and stated § 87(2)(b) was very particular with what he wanted to wear so he went back and forth between into his bedroom and § 87(2)(b)’s bedroom several times until § 87(2)(b) was satisfied. Det. Pengel mentioned that he saw the marijuana to § 87(2)(b) but stated they weren’t concerned with it. Det. Pengel stated he didn’t recall referring to the marijuana as “bullshit weed” and just remembered telling him that it wasn’t a big deal and they weren’t concerned with it. Det. Pengel never heard Sgt. Burns threaten to arrest any individual inside the apartment. Det. Pengel didn’t hear any conversation about recording the incident. He never heard Sgt. Burns tell anyone to pause/stop a recording, and never observed Sgt. Burns do anything that would have caused a phone recording to pause or stop.

Det. Pengel was presented with the above documented video footage and identified himself as walking out of § 87(2)(b)’s bedroom. He stated that the video was recorded as he was going back and forth between the bedrooms to try and get § 87(2)(b) dressed. Upon viewing the portion of the footage that depicts Sgt. Burns conversing with the family, Det. Pengel stated he did not witness this interaction, and had no knowledge of it since at the time he went back into § 87(2)(b)’s bedroom. (Board Review 06)

Det. Greco testified that when they arrived at the location he went around the back of the location for rear security. Because of this Det. Greco could not articulate what transpired when the officers entered. While in the back, he could not see inside the apartment. After five-seven minutes, he received communication that the officers entered the apartment and apprehended the subject. Det. Greco entered the building and then entered the apartment. He observed § 87(2)(b) as well as Sgt. Burns in the kitchen area. Sgt. Burns informed Det. Greco to go to the back bedroom to the right, and sit with § 87(2)(b) and stay with and don’t let him out. When Det. Greco entered the bedroom, § 87(2)(b) was already handcuffed and Det. Pengel was there. Det. Pengel then left the room. Det. Greco closed the door



almost fully when Det. Pengel left the room for security purposes, so § 87(2)(b) wouldn't be able to escape. Because the door was closed Det. Greco had no knowledge of what Sgt. Burns and Det. Pengel were doing or where they went. Det. Greco did not search any room in regards to the firearm. Det. Greco didn't recall having any knowledge of any search being conducted for a firearm, and no officer informed him of this. However, he did know that Det. Pengel went into one of the bedrooms because he was getting clothes for § 87(2)(b). While in the room with § 87(2)(b) he brought up that his girlfriend was lying about him having a firearm and that he could show him where real guns are, and that a lot of people carry real guns in the neighborhood. Det. Greco recalled a conversation with § 87(2)(b) indicating that Sgt. Burns saw marijuana somewhere in the apartment, but didn't hear any officer refer to the marijuana as "bullshit weed". Det. Greco did hear individuals talking from outside the room but didn't hear any specific and therefore couldn't tell what they were talking about. Det. Greco didn't hear Sgt. Burns threaten to arrest any individual, and didn't hear any civilian complain of being threatened with arrest. Det. Greco never told § 87(2)(b) to "back the fuck off" and didn't recall hearing any officer state that, nor was he ever informed of this. Det. Greco didn't recall observing or hearing Sgt. Burns have a conversation with any individual about a recording and was never informed of any conversation about that. Det. Greco did not hear Sgt. Burns request to pause or stop a recording and never saw him perform any action that would cause a cell phone recording to be paused or to stop.

When Det. Greco viewed the above documented video footage he stated that during this video he was inside of the § 87(2)(b)'s bedroom with § 87(2)(b). He had no knowledge of the interaction depicted on the video. (Board Review 07)

Det. Howell testified that when they got to the location, he stood approximately 10-15 feet further down the hallway by himself for security reasons- watching the staircase, the doors and seeing if anyone comes, while Sgt. Burns and Det. Pengel knocked on the door. Because of this he didn't hear the conversation at the door and didn't know the context behind how the officers obtained entry, but stated when they entered one of them waved at to him to come inside too. Sgt. Burns informed Det. Howell to stand by the front door for safety and security reasons, while the rest of them walked down the hall into a back room of the back of the apartment. From where he was standing, in front of the front door, he had a clear view into the kitchen but not the hallway. Because of this, he also was not able to articulate if the room door was closed or if his partners went into different rooms. Det. Howell had no knowledge of a search of the apartment being done, and didn't hear any civilian complain of a search. Det. Howell had no knowledge of officers telling the residents that they were looking for a firearm and never heard Sgt. Burns threaten to arrest any individual, or heard any officer tell § 87(2)(b) to "back the fuck off." Det. Howell didn't recall any marijuana being recovered in the house and didn't recall any officer referring to the marijuana as "bullshit weed". Det. Howell didn't recall any bullets being recovered. Sgt. Burns engaged in a conversation in the kitchen area with § 87(2)(b) and § 87(2)(b) but Det. Howell did not recall what this conversation consisted of. Det. Howell never heard Sgt. Burns request for him to pause/stop a recording and never observe him take the phone from his hands or conduct any action that could have caused the recording to be paused/stopped. After this brief conversation, § 87(2)(b) was brought out the room and transported to the 18<sup>th</sup> Precinct stationhouse.

Det. Howell was presented with the above documented video footage and stated that during this video he was standing by the front door. Det. Howell stated the interaction between Sgt. Burns and the family members in the kitchen depicted in the video was the same one he referenced in his testimony, but stated he didn't recall the details of the conversation or Sgt. Burns telling them to pause the recording. Det. Howell had no knowledge of why Sgt. Burns wanted the recording paused and wasn't aware of any sensitive information that Sgt. Burns wouldn't have wanted recorded. Det. Howell was never informed by Sgt. Burns of why he wanted the recording paused or if he grabbed the phone from the civilian's hand to stop the recording. (Board Review 08)

Individuals have a right to lawfully observe and/or record police activity including, but not limited to detentions, searches, and arrests. This right extends to individuals when they are on their own property. This right to record police action can be limited for reasons such as the safety of officers. Police officers cannot threaten, intimidate, or otherwise discourage an observer from recording the police officer's activities. *NYPD Patrol Guide Procedure 203-29* (Board Review 09)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) [REDACTED] has been a party to two CCRB complaints, but this is the first she has been named a victim.
  - § 87(2)(b) [REDACTED]
  - [REDACTED]
- § 87(2)(b) [REDACTED] has been a party to two CCRB complaints, and has been named a victim in three allegations.
  - § 87(2)(b) [REDACTED]
  - [REDACTED]
- § 87(2)(b) [REDACTED] has been a part to the two CCRB complaints, but this is the first he has been named a victim. § 87(2)(b) [REDACTED]

§ 87(2)(b)

- This is the first complaint to which § 87(2)(b) has been a party. (Board Review 13)
- Sgt. Burns has been a member of service for nineteen years and has been a subject in nine CCRB complaints and twenty-six, none of which were substantiated.
- Det. Pengel has been a member of service for fifteen years and has been a subject in nine CCRB complaints and nineteen allegations, none of which were substantiated.
- Det. Howell has been a member of service for twenty years and has been a subject in six CCRB complaints and six allegations, none of were substantiated.
- Det. Greco has been a member of service for twelve years and has been a subject in seven CCRB complaints and fourteen allegations, none of which were substantiated.

### **Mediation, Civil and Criminal Histories**

- This case was unsuitable for Mediation.
- On February 21, 2019, a request was made determine if a Notice of Claim was filed in regards to this incident. Confirmation from the Office of the New York City Comptroller will be added to the case file upon receipt.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
■ [REDACTED]  
[REDACTED]

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Title & Name

\_\_\_\_\_  
Date